

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 2795 OF 2005

IN

SUIT NO. 1720 OF 1984

M/s. Gandhi Qureshi Patil
and Kagalwala

.....Plffs.

VS.
Lilavati Gunvantrai Parekh
and anr.

.....Defnds.

Sunita Tiwari for the plffs.

Ms. Nainesh Amin i/b. Mr. K.A. Sampat for defnd
no.2.

CORAM: S.U. KAMDAR, J.

DATE : 30th September, 2005.

P.C. :.

1. By consent of the parties the motion is
placed for hearing and final disposal forthwith.

2. Motion is for setting aside an ex-parte order
passed of the dismissal of the suit though there is

no much ground set out in the affidavit in support. However with a view to given an opportunity to the plaintiff to determine his case on merits I set aside the order dated 21.7.2005 of the dismissal of the suit with a condition to pay cost to the defendant no.2 quantified at Rs.10,000/-. Written statement of the 2nd defendant is taken on record. In view of the fact that the defendant no.1 has expired the name of the defendant no.1 is deleted on instructions of the plaintiffs. Affidavit of documents if any to be filed of both the parties within two weeks from today. Inspection, discovery to be filed two weeks thereafter.

3. By consent of the parties Mr. Sushil Vyas having his office at 20/24, Champagalli Cross Lane, 4, Singapore Bldg, Opp. M.J. Market, Ground Floor, Kalbadevi, Bombay, is appointed as Commissioner for recording evidence. The said Commissioner will commence the recording of the evidence with effect from 15.10.2005 and continue and conclude the same on or before 31.12.2005. The Commissioner is empowered to close the evidence of

the witness, if inspite of two adjournments the witness does not make himself available. Examination-in-chief to be filed by both the parties on affidavit and the concerned witness should be made availaible for cross-examination. All the objections raised before the Commissioner will be recorded and the same will be determined at the hearing of the suit. Commissioner to file report on or before 10.1.2006.

4. Motion disposed off accordingly. There shall be no order as to costs.

sd/-
